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Held at the Palais des Nations, Geneva,
on Wednesday, 13 November 1991, at 10 a.m.

Chairman: Mr. VOYAME

CONTENTS

Consideration of reports submitted by States parties under article 19 of the Convention (continued)

Initial report of the United Kingdom

Initial report of Belize

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Initial report of the United Kingdom (CAT/C/9/Add.6)

1. At the invitation of the Chairman, Mr. Morris, Mr. Caffrey, and Mrs. Evans (United Kingdom) took places at the Committee table.

2. Mr. MORRIS (United Kingdom) said that, since the submission of the initial report of the United Kingdom (CAT/C/9/Add.6) in March 1991, there had been some significant developments that he wished to mention.

3. His delegation recognized that the Committee might wish to discuss a number of issues in the course of the meeting and it would try to be as informative and helpful as possible. Its comments would, of course, be without prejudice to any formal legal view his Government might have about the scope and interpretation of the Convention.

4. In preparing the initial report, his Government had tried to explain as fully as possible the range of legal provisions and other measures through which the United Kingdom sought to meet its obligations under the Convention. That was not an entirely straightforward task given that the United Kingdom comprised what were in effect three separate jursidictions - England and Wales, Scotland and Northern Ireland. Whatever the differences in the various legal systems, however, the same principles applied in all parts of the country and it was considered essential that the report should set out clearly the arrangements in each one. That had contributed to the delay in the submission of the initial report, for which he apologized to the Committee.

5. The United Kingdom took its obligations under the Convention seriously and continued to pride itself on being a country where the freedoms of the individual were protected. However, United Kingdom Governments had not been complacent about those arrangements and, where it had been found that further measures were needed to improve the protection of rights, legislation and procedures had been revised and amended accordingly. By way of example, he said that a number of specific measures had been adopted which had a close bearing on the concerns of the Committee; some of those measures had been covered in the initial report, while others were more recent.

6. United Kingdom law had always taken a serious view of crimes against the person and those who had committed acts amounting to torture or other forms of ill-treatment were capable of being charged with a range of offences, many carrying heavy sentences. However, the Criminal Justice Act 1988 had added to United Kingdom law by creating a specific offence of torture based on the definition of torture contained in the Convention. The United Kingdom had also ratified the European Convention for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment, which had entered into force at the beginning of February 1989.

7. Another key piece of legislation mentioned frequently in the report was the Police and Criminal Evidence Act 1984, which sought to create a new balance between the powers of the police and the rights of suspects. Its operation had been regularly reviewed and revised since it had been enacted in 1986. It dealt with police powers, the rights of persons in police detention, police discipline and complaints against the police.

8. Under the Act, four codes of practice in connection with police powers of search and seizure of property, detention, treatment, questioning and identification of suspects had also came into force. Failure on the part of an officer to comply with any provision of a code was a disciplinary offence. A code governing the tape-recording of police interviews had also been issued. Recently, all the codes had been reviewed and revised codes had come into force in April 1991, thus strengthening the safeguards of persons in police detention.

9. The Government had recently announced proposals for introducing changes in prisons on the basis of recommendations made by Lord Justice Woolf in a report prepared following serious disturbances in six prisons in England and Wales in 1990. The Government had now published a White Paper setting out a comprehensive and coordinated programme of change and accepting the central proposition of the Woolf report that security and control had to be balanced with justice and humanity. Henceforth, there would be better security and control of prisoners; more purposeful programmes under which prisoners would work towards the cost of their upkeep and be sent out with a better likelihood of contributing to the community; and better relations between staff and prisoners so that trouble could be averted and difficulties resolved.

10. The reforms to which the Government attached particular importance and on which it was taking immediate action were the ending, by late 1994, of the practice of slopping out because of the absence of integral sanitation in cells; a code of standards for accommodation, programmes and facilities to be provided in all prisons; and the appointment of an independent complaints adjudicator by the end of 1992.

11. His country's report referred in a number of places to the Children Act 1989, which had entered into force in October 1991 and constituted the most fundamental twentieth-century reform of United Kingdom legislation relating to the care, protection and upbringing of children. It brought together for the first time both public and private law covering the entire field of care for children and was based on the principle that the welfare of the child must always be the first consideration in decisions by the courts and local authorities. It included new measures to help protect children from abuse and established specific requirements for the setting up of complaints procedures for persons in residential homes and for the monitoring of residential establishments.

12. Terrorism continued to be a real threat in the United Kingdom, as was evident from recent bombing attacks on the Government itself, as well as on passengers at railway stations, and especially in Northern Ireland. While it was still necessary to keep in place exceptional measures contained in the Prevention of Terrorism Act and in the Northern Ireland Emergency Provisions Act, there were valuable safeguards, including the annual debate in Parliament

on the renewal of the measures following an annual review of the legislation by an independent reviewer; regular periodic statutory reviews of a person's detention under the powers of extended detention; and the right to legal advice and to have someone informed of one's arrest. The exercise of those two rights could in no circumstances be delayed for more than 48 hours.

13. All the provisions of the Northern Ireland Emergency Provisions Act had been thoroughly considered by Parliament when it had re-enacted that measure in 1991. Two new safeguards had also been proposed for the questioning of terrorist suspects in Northern Ireland. Conditions of detention were currently regulated by the Code of Conduct of the Royal Ulster Constabulary, the rules being set out in the Northern Ireland "Guide to the Emergency Powers". That Guide was soon to be replaced by a statutory Code of Practice, admissible in civil and criminal proceedings governing the detention, treatment, questioning and identification by police officers of persons detained under the Prevention of Terrorism Act. The Government was also considering the appointment of an independent commissioner to monitor procedures at holding centres, with the remit to visit those centres at any time of his or her choosing. The commissioner's main task would be to ensure that the proper procedures relating to the treatment of terrorist suspects were being followed and, more generally, that the arrangements for the detention of suspects were satisfactory.

14. Mr. BURNS (Country Rapporteur) thanked the United Kingdom delegation for its very full report, which contained information, especially with regard to the treatment of children and the treatment of persons detained under mental health legislation, that had never been offered in any other report the Committee had had to consider over the past four years. He would first ask a few general questions and then raise some specific points relating to Northern Ireland, since the report showed that there was a marked difference between the regime applied in England, Scotland and Wales and that applied in Northern Ireland.

15. Paragraph 7 of the report stated that confessions made by an accused person could not be given in evidence against him if they had been obtained by "oppression". What precisely was meant by that term? While oppression would no doubt include torture, inhuman or degrading treatment or the use of or threat of violence, he suspected that its scope might be even wider. He would also like to know where that prohibition was enshrined in United Kingdom legislation and whether it was part of common law or statutory law. Paragraph 13 stated that torture had been made an offence under section 134 of the Criminal Justice Act 1988. What was the penalty imposed for that offence and was the definition of torture in the Act couched in terms identical to the definition contained in the Convention?

16. As to extradition and return, he was not sure whether the grounds for refusal set out in paragraphs 18 and 19 were sufficient to meet all the obligations the United Kingdom had assumed under article 3 of the Convention. Thus, paragraph 19 (c) stated that an order for return might be refused if the accusation was not made "in good faith". What would be the situation if a country which did not conform to the same standards as States parties to the Convention made an order for return in what it considered to be good faith? The phrase "in the interests of justice" in the same paragraph also seemed to

imply that the person concerned might well be convicted and might well suffer inhuman treatment or torture if returned. Under the Convention, the United Kingdom had a formal obligation not to return such a person, but the paragraph implied that the regime might allow the possibility of such returns. It should be noted that, under the Convention, States parties were not allowed any discretion in that regard.

17. Paragraphs 25 to 27 of the report gave fairly detailed information on the Immigration Rules; however, he pointed out that the question of what did or did not constitute refugee status was not relevant to the obligations contained in article 3 of the Convention. Paragraph 26 stated that any claim of likely torture on return to another country would be assessed in relation to the "possible use of exceptional leave". He would appreciate an explanation of the meaning of that term.

18. Where article 6 was concerned, he had been struck by the marked difference between the regime of England, Wales and Scotland and the regime of Northern Ireland with regard to the detention for purposes of questioning of persons suspected of a serious crime. Under the former regime, for example, it was accepted that the detained person had a right to access to a solicitor, but the regime in Northern Ireland was clearly quite different both in law and in practice. The procedures for the questioning of suspects, at least in England, Scotland and Wales, appeared to be fully in keeping with the Convention and he welcomed the commitment of the United Kingdom Government to international cooperation and mutual assistance as indicated in paragraph 58.

19. With regard to article 10, paragraph 60 referred to training programmes for law enforcement personnel involved in the custody, questioning or treatment of arrested persons. However, it had been pointed out by the Howard League for Penal Reform that no formal instruction was given to such personnel in respect of their international obligations in that regard. Paragraph 61 stated that no formal training was given to health care professionals in the identification of signs of torture: that seemed to him a very weak attitude in so far as meeting the requirements of the Convention was concerned. He would have hoped that at least some attempt would have been made to train health care professionals to recognize such signs.

20. He had read with great alarm the statement in paragraph 73 that the Government was currently considering what amendments might be made to the rules governing the right of silence in England and Wales. Under the rules that now operated, if an accused person declined to make a statement, whether exculpatory or inculpatory, that refusal could not be commented on in a subsequent criminal trial. However, in Northern Ireland, a different set of rules applied to the interrogation of persons suspected of terrorism and there was in effect no right of silence. He took it that the statement in paragraph 73 implied that the Government was considering extending the regime operating in Northern Ireland to the rest of the United Kingdom. He hoped that that was not, in fact, the case.

21. The report did not give any details on how offences committed by members of the armed forces were dealt with, either in a disciplinary sense or otherwise. In some countries, the armed forces were notorious for being guilty of such offences, but he believed that that was not the situation in

the United Kingdom and that could well be the reason why no mention had been made of it in the report. He would nevertheless appreciate some further information on that point.

22. On the subject of immigration, paragraph 75 stated that interview rules and other procedures were reviewed regularly. However, at least one non-governmental organization had indicated to the Committee that it was concerned at the way decisions on refugee status were taken in the United Kingdom. In two specific instances, one involving nationals of Zaire and the other nationals of Sri Lanka, persons had been returned to their country of origin when there had been a real threat that they might be subjected to cruel or inhuman treatment or even torture. In the case of the Sri Lankans, an internal review had concluded that they did in fact qualify for refugee status, but the decision to return them had been taken before the review had been completed. Could the United Kingdom delegation tell the Committee how such reviews were actually carried out and how much education was given to immigration officers regarding the United Kingdom's obligations under the Convention? Was the Government making any real attempt to ensure that immigration officers were made aware of those obligations?

23. In connection with article 12, paragraph 77 stated that, in England and Wales, anyone who alleged that he had been the subject of torture could go to the police with a complaint. It then added, somewhat laconically, that "broadly comparable" provision and practice existed in Scotland and Northern Ireland. Could the United Kingdom delegation provide statistics on how many such complaints had been made and whether they had been successful? Were such statistics readily available and were they published, for example, in the annual Home Office Report? Unfortunately, where investigations into complaints were carried out by the police themselves, it was difficult to ensure impartiality even in the most civilized societies and, in a situation such as that of Northern Ireland, that problem was greatly exacerbated.

24. Information supplied to the Committee by the Howard League for Penal Reform showed that, whereas in 1980 there had been 21 suicides among persons in detention, in 1990 there had been 51, an increase of 100 per cent in a decade. He took it that those figures referred to England and Wales. The League had suggested that the suicidal tendencies shown by persons incarcerated were often not taken seriously and that detention in strip cells would have the effect of exacerbating such tendencies. Were those statistics in fact accurate and, if so, were they a source of concern to the Home Office?

25. He complimented the United Kingdom representatives on the very full account given of the conditions governing detention under mental health legislation, although he had been alarmed to read in paragraph 87 that electro-convulsive therapy could still be administered, either with the patient's consent or with a second medical opinion.

26. As far as article 14 was concerned, the report indicated that the United Kingdom had probably the best compensation system anywhere in the world, taking into account the combined effect of the Criminal Justice Act 1988 and the powers of the Criminal Injuries Compensation Board. The Government was to be commended on introducing that system so early and on

continuing to apply it. He noted from paragraph 119 of the report that the network of support schemes for victims of crime was extremely extensive and the Government was to be complimented on that as well.

27. With regard to article 15 of the Convention, he would again appreciate an explanation of the meaning of the term "oppression" used in paragraph 121. He would also like to know why that paragraph referred only to confessions, whereas the scope of article 15 was wider and covered statements in general.

28. Referring specifically to Northern Ireland, he acknowledged the assistance he had received from several non-governmental organizations, including Amnesty International and the Committee on the Administration of Justice, as well as from a lawyer who had been actively involved in defending several persons subject to detention in Northern Ireland and from articles and letters in the press, specifically the Guardian.

29. He requested the United Kingdom delegation to explain how certain features of the provisions relating to the detection of terrorist activities in Northern Ireland were applied in the light of obligations under the Convention, which did not allow derogations from its provisions even in times of emergency. In Northern Ireland, unlike the rest of the United Kingdom, a person might be held by the police under the Prevention of Terrorism Act for an initial period of 48 hours, which could be extended for a further five days on application to the Secretary of State for Northern Ireland, before he was brought before a judge. A person could thus be held by the police for questioning without charge for a total period of seven days. Since it had been observed in countries where torture was prevalent that instances of torture tended to occur within the first 48 hours of incarceration, the seven-day period might be regarded as a matter of concern to the Committee. Under the existing legislative regime, moreover, detainees did not have access to legal counsel during the first 48 hours and could effectively be held incommunicado, thereby creating conditions which might lead to abuses of authority by agents of the State. Although provision was made for State-paid doctors to examine detainees, the latter had no right to obtain independent medical advice during the period in question.

30. In addition, the special rules relating to silence and confession and the absence of the traditional British constitutional protection of trial by peers, which had been replaced by the Diplock court system of trial by judge alone, meant that the ordinary protection enjoyed by citizens in the rest of the United Kingdom was not available to persons charged with or suspected of offences of terrorism in Northern Ireland. Such a lack of legal protection was to be noted, particularly when the purpose of detention incommunicado and the intensive 48-hour period of investigation appeared to be to extract an admission from the accused. In that connection, he had been interested to learn from the information he had received that 90 per cent of the cases brought before the Diplock courts relied solely or mainly on confession evidence. Such a situation would, in his view, inevitably put interrogators under great pressure to obtain confessions and would, by implication, create a significant opportunity for conduct which came within the purview of the Committee. He pointed out that a large number of allegations had been brought to his attention concerning ill-treatment in terms of the application to persons under interrogation of varying degrees of physical force.

31. He also noted that there was official resistance to video recordings of interrogation and he had been surprised that the rationale offered by a senior officer of the State for such resistance was that, if recordings were made, those willing to give information would fear that their own organizations might find out about it. Such an observation was, however, equally true if the person made a verbal or written statement. Moreover, the general conclusion might be that opposition to video recordings of interrogation was prompted by fears that they would reveal that many of the allegations were in fact substantiated.

32. A letter from the Chief Constable of the Royal Ulster Constabulary to the editor of the Guardian on 31 October 1991 stated, in the defence of officers against whom allegations of ill-treatment had been made in a report by the newspaper, that there had been 222 complaints in respect of Castlereagh in 1989, none of which had been substantiated, and that there had been 223 in 1990, none of which had been substantiated. The letter further stated that, in all cases, the completed investigation had been examined by the Independent Commission for Police Complaints. He requested information on that Commission and asked whether any settlements had been made on behalf of the Government with complainants in respect of ill-treatment at the hands of interrogating officers, particularly at Castlereagh.

33. He also expressed concern at the fact that the letter from the Chief Constable of the Royal Ulster Constabulary contained the rationale that, while upholding the rights of persons in custody, it was important not to lose sight of the right of the majority to be protected from murder, maiming and bombing. The inference he drew from such a statement was that, where there was a potential for murder, maimimg and bombing, the rights of persons in custody could be overriden. The United Kingdom had nevertheless voluntarily undertaken to fulfil the obligations established in the Convention and, consequently, whatever protection it provided for the potential victims of such crimes, it could not derogate from those obligations.

34. He drew attention to the case of an application for a writ of habeas corpus made on behalf of Brian Gillen, who had been held under security legislation. The judge, in determining prima facie the allegations made by Mr. Gillen, had had to decide whether or not habeas corpus was warranted. Mr. Gillen had alleged physical ill-treatment during interrogation at Castlereagh and a writ of habeas corpus had been issued. The account of the judgement and the information collected by Amnesty International and other bodies suggested that there was reason to find in a preliminary hearing that there was indeed a prima facie case. In the light of that case, he therefore requested the United Kingdom delegation to comment on the regime which existed in Northern Ireland, particularly in relation to the strong allegations made in connection with interrogation at Castlereagh. He hoped that the delegation would be able to reassure the Committee that the United Kingdom Government did not intend to extend the rules relating to the right of silence in Northern Ireland to the rest of the country and that the current regime did not violate the terms of the Convention or, alternatively, that whatever changes might be required would be made in order to ensure that the provisions of the Convention were complied with in relation to Northern Ireland.

35. The CHAIRMAN, speaking as alternate country rapporteur, thanked the United Kingdom delegation for its very full report, as well as the organizations which had provided additional information. He endorsed the questions which had been put by Mr. Burns, the country rapporteur.

36. Referring to article 2 of the Convention and paragraphs 13 to 15 of the United Kingdom report, he said that, although the relevant legislative and judicial measures had been clearly indicated, he would welcome further information on relevant administrative measures. He also asked about the meaning of the term "assault" in Scots law, as used in paragraph 13, and whether it included torture and other ill-treatment with which the Convention was concerned.

37. With regard to article 5, paragraph 2, and article 7, paragraph 1, of the Convention, he requested information on the application of provisions relating to the non-extradition of a person who had committed an act of torture and the trial of such a person within the country.

38. Like Mr. Burns, he had been surprised by the contents of paragraph 61 of the report. Even in a situation where there were no identified instances of torture, he did not think it could be concluded that it was unnecessary to provide training to health care and other professionals. The statement made in paragraph 61 seemed to be rather categorical in the light of decisions taken by the European Court of Human Rights in the 1980s and the many allegations of inhuman and cruel treatment in respect of Northern Ireland.

39. Referring to article 11 of the Convention, he requested further information on day-to-day monitoring of the implementation of legislation.

40. With regard to Northern Ireland, he asked whether, in view of the prima facie case in relation to Mr. Gillen, any legal or disciplinary action had been taken against the alleged perpetrators of the ill-treatment and whether the victim had been awarded compensation.

41. Mr. SORENSEN, referring to paragraph 3 of the report and the visit of the Council of Europe committee, of which he had been a member, to the United Kingdom in 1990, said that the report of that committee had been submitted to the United Kingdom Government in spring 1990. The report would remain confidential unless the United Kingdom authorities decided to publish it and he expressed the hope that they would decide to do so.

42. Mr. KHITRIN said that the fact that the report did not contain the national legislation which had a direct bearing on the implementation of the Convention detracted from its quality. Did the legislation guarantee the prohibition and elimination of torture as defined in the Convention? In that connection, he wished to have the full text of section 134 of the Criminal Justice Act 1988.

43. With regard to article 2 of the Convention, he asked what measures had been taken to prevent acts of torture being committed within the jurisdiction of the United Kingdom, in particular in Northern Ireland. What officials were entitled to make arrests and what were the guarantees of an arrested person in custody? He also requested further clarification of the rules governing the right to silence.

44. Referring to article 4 of the Convention, he asked how ill-treatment of a detainee by a police officer was described, what the relevant punishment was and what material and moral compensation was available to the victim.

45. In connection with article 7 of the Convention, he asked whether there had been any cases when criminals were not extradited by the United Kingdom and, if so, what measures the United Kingdom had taken against the persons concerned.

46. It was encouraging to learn from paragraph 61 of the report that there had been no identified instances of torture in any United Kingdom establishment and that no formal training therefore had to be afforded health care professionals in the identification of signs of torture. He nevertheless believed that the educational materials provided for law enforcement officials should refer to the prohibition of torture.

47. He had received material from Amnesty International which he would transmit to the secretariat and he requested the delegation of the United Kingdom to comment on that material at the following meeting if possible.

48. The information given in the report on article 11 was not detailed enough. He wished to know how the United Nations Standard Minimum Rules for the Treatment of Prisoners were implemented in the United Kingdom, what sanitary standards were like and what other standards were applied to persons who were in custody or had been convicted.

49. Ms. CHANET said that, since the United Kingdom had no written constitution or bill of rights, treaty monitoring bodies had difficulties in finding out what administrative and legal measures were taken to implement international conventions. Moreover, such conventions were not directly applicable in United Kingdom law. She too would have liked the United Kingdom report to go into greater detail on the legislation which made it possible to implement the provisions of the Convention.

50. She asked whether the Convention applied to dependent territories of the United Kingdom including Hong Kong and whether any relevant declaration had been made in that regard.

51. It was sometimes difficult to understand how the regime concerning questioning during detention applied in the different parts of the United Kingdom. The report stated in several places that the regime was broadly the same in all parts of the country, but it was clear that it was different in Northern Ireland.

52. Perhaps the United Kingdom delegation could inform the Committee why the report said nothing about article 1 of the Convention.

53. Like other members of the Committee, she would be interested to see the text of section 134 of the Criminal Justice Act 1988, which might answer some questions concerning articles 1 and 4 of the Convention. She had been unable to understand from paragraph 34 of the report what acts constituted the

offence of torture under the relevant United Kingdom legislation or from paragraph 6 what constituted assault and whether the definitions corresponded to those of international law.

54. Concerning article 3 of the Convention, paragraph 25 of the report referred to the provisions of the 1951 Convention relating to the Status of Refugees and stated that "no one is deported or removed to a country in which he would have a 'well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion'". However, a person could well not be persecuted for those reasons and still risk being tortured. The Convention against Torture and the 1951 Convention did not overlap. Perhaps the delegation could specify how the United Kingdom implemented article 3 of the Convention and whether the statement in paragraph 20 of the report that "This discretion is exercised in accordance with the requirements of article 3", relating to extradition, also covered expulsion and refoulement.

55. The text of section 134 of the Criminal Justice Act 1988 was also necessary as far as articles 5 and 7 of the Convention were concerned, since it contained provisions on the jurisdiction of the courts. In that connection, she wished to know whether an alien who had committed an act of torture abroad against another alien and had been arrested in the United Kingdom could be tried in the United Kingdom if he was not extradited and, if so, whether the same was true in Northern Ireland.

56. Turning to article 11 of the Convention and the specific powers of detention for up to seven days held by the police in Northern Ireland, she said that she believed that, following a case brought before the European Court of Human Rights, the United Kingdom had exercised its powers of derogation. However, there were risks in the fact that detainees in Northern Ireland did not have immediate access to a lawyer and that there was no provision for a visit by an independent doctor. That those risks existed was borne out by the number of complaints concerning ill-treatment in conditions of solitary confinement designed to extract confessions in Northern Ireland, a part of the United Kingdom where exceptional legislation restricted the safeguards provided for in article 11 and where the usual traditions of the United Kingdom did not obtain. She asked for a frank statement by the United Kingdom delegation on that point.

57. Referring to article 12 of the Convention relating to investigations, she asked for clarification of the statement in paragraph 77 of the report that the provision and practice in Scotland and Northern Ireland were "broadly comparable" with those elsewhere in the United Kingdom and whether complaints against the police were dealt with by the police or by another authority.

58. She asked whether statements by witnesses that had been extorted by force were withdrawn from the record as required by article 15 of the Convention. From section 8 of the Northern Ireland (Temporary Provisions) Act 1978, it seemed that article 15 of the Convention did apply in Northern Ireland, but she wondered whether cruel, inhuman and degrading treatment was also covered by that section.

59. With respect to article 16, she said that she believed that corporal punishment for children in schools was now prohibited in the United Kingdom, but would welcome confirmation of that fact. She also wished to know whether the position was the same throughout the United Kingdom.

60. She wondered whether the use of strip cells to house suicidal prisoners was psychologically the best way of preventing suicide.

61. To end on a positive note, she said that she considered the provisions for the treatment of the mentally ill in the United Kingdom to be some of the best in Europe.

62. Mr. GIL LAVEDRA said that he associated himself with the comments and questions by the country rapporteur and the alternate country rapporteur and that the report contained extremely detailed and valuable information about points which were important, but might be of secondary interest, such as mental health or child care, while, in other more crucial areas, it was vague and general.

63. Section 134 of the Criminal Justice Act 1988 was clearly vital in prohibiting torture and in making acts of torture punishable under criminal law. It was therefore a matter of regret that the text of section 134 was not included in the report.

64. According to paragraph 33 of the report, in cases of serious assaults involving members of the armed forces, "the Chief Officer of Police for the area ... would - in consultation with the appropriate commanding officer - decide whether jurisdiction was to be exercised by the Service or by the civilian authorities. In general, offences, solely involving assaults, etc. on civilians would be tried by the civilian authorities and cases solely involving assaults on servicemen would be tried by the Service authorities". He asked what was meant by the words "In general" and requested further clarification on how the decision concerning jurisdiction was actually taken.

65. With regard to article 5 of the Convention, he asked what the actual provisions of section 134 were whereby United Kingdom jurisdiction was established over the offences referred to in article 4 of the Convention, as required by article 5, and further noted from paragraph 39 that the provisions of United Kingdom law did not seem to meet the requirements of article 5, as that paragraph appeared to indicate that jurisdiction was restricted and made no specific mention of jurisdiction over the crime of torture.

66. He endorsed the questions put by Mr. Burns and Ms. Chanet on the system of detention in Northern Ireland and pointed out that the length of time during which persons could be held without trial was certain to give rise to problems, despite the provision for the medical examination of detainees.

67. Mr. DIPANDA MOUELLE expressed his appreciation both for the initial report of the United Kingdom and for the oral introduction by the United Kingdom representative. Although most of his concerns had already been expressed by other members of the Committee, he requested further information on the independent advisers referred to in paragraph 23 of the report dealing with the provision, under Schedule 2 to the Prevention of Terrorism (Temporary

Provisions) Act 1989, for an excluded person to make representations against his or her exclusion. In connection with the information provided on articles 12 and 13 of the Convention, he asked whether prison warders were armed and what procedure was followed in the event of a serious incident, such as a prison riot. With regard to article 14, he wished to know whether the State was directly responsible for compensating a victim of torture if the torturer was insolvent. In his view, the State should be responsible in all cases.

68. Mr. MIKHAILOV thanked the United Kingdom delegation for submitting an extensive report which went into great detail in certain areas. Paragraph 4 of the report mentioned section 134 of the Criminal Justice Act 1988 and he requested a copy of the text of that section, which was clearly a key provision in efforts to combat torture. Paragraph 18 stated that, under section 6 of the Extradition Act 1989, a person could not be extradited if he had been accused or convicted of an offence of a political nature. He asked whether any distinction was made in such cases between the jurisdiction of the Secretary of State and a court, as the information given in paragraph 18 appeared to indicate that both were responsible for taking the relevant decisions.

69. He was somewhat surprised by the amount of power, as far as sentencing was concerned, that was vested in the Sheriff Court, which was mentioned in paragraph 29 and could impose a maximum sentence of three years, and he asked whether there was any form of judicial supervision of the Sheriff Court.

70. The information on the Mental Health Act Commission contained in paragraph 94, indicated that it was an independent statutory body appointed by the Secretary of State. He asked whether it was an administrative or a judicial commission, what its exact functions were and whether it was subject to judicial supervision. He also noted from paragraph 161 of the report that an employer, which he took to mean a private individual or an administrative body, was entrusted with the important task of investigating cases of suspected child abuse and with informing the police. He asked for details of the employer's responsibility in that regard, since the report did not make it clear whether administrative bodies took precedence over judicial bodies, and exactly what role was played by the Crown Prosecution Service in combating torture.

71. Mr. PERLAS thanked the United Kingdom delegation for its detailed report and introduction, which, in conjunction with the questions already put by the other members of the Committee, allowed him to refer only to a few points relating to the Mental Health Act. He had noted that suicidal or depressed prisoners were confined in strip cells in order to prevent them from harming themselves. He wished to know whether they were also referred to a psychiatric institution in order to receive treatment for their mental condition and whether the Mental Health Act Commission was responsible for monitoring the mental health of prisoners, as well as that of detained patients. He asked whether the Criminal Procedure (Insanity) Act 1964, which was referred to in paragraph 90 and under which a person charged with an offence and found unfit to plead to the charge, or not guilty of an offence by reason of insanity, must be admitted to a hospital, might not mean that the person would serve a longer sentence than would have been the case if

he had been sentenced under normal criminal procedure, as had sometimes happened in the United States of America.

72. The CHAIRMAN informed the Committee that a supplementary report describing the position in the United Kingdom's dependent territories would be submitted at a later date.

The meeting was suspended at 12 p.m. and resumed at 12 15 p.m.

Initial report of Belize (CAT/C/5/Add.25)

73. The CHAIRMAN said that, although Belize had submitted an admittedly succinct report and had been invited to send a delegation to present the report to the Committee, no delegation was present in Geneva. Because of the country's size, it was possible that it might not be able to send a delegation. In his view, however, the report should not be considered until Belize had been informed that the Committee preferred not to examine a report in the absence of a delegation. He suggested that consideration of the report of Belize should be postponed until the Committee's next session, to which the Government of Belize should be invited to send a delegation, and that it should be informed that the report would be examined at that session even if a delegation was not present.

74. Mr. PERLAS (Country Rapporteur), supported by Mr. BURNS (Alternate Country Rapporteur), said that he agreed with the Chairman's suggestion.

75. Mr. GIL LAVEDRA said that he also agreed with the Chairman's suggestion, but considered that, because the report was so brief, it was not in keeping with the Committee's guidelines. He suggested that the Committee should take the present opportunity to send Belize a copy of the Committee's general guidelines regarding the form and contents of initial reports, together with a number of sample reports. Belize could thus be invited to submit an additional report which would enable the Committee to consider the situation in Belize properly at its next session.

76. Mr. SORENSEN said that he endorsed Mr. Gil Lavedra's suggestion and drew attention to the fact that the report of Belize was described as "A Note". In its letter to Belize, the Committee might say that it had placed Belize's note on record, and looked forward to receiving an additional report before its next session.

77. Mr. MIKHA'ILOV suggested that the country rapporteur and the alternate country rapporteur should send Belize a list of questions based on the report before the Committee in order to make it easier for Belize to prepare the additional report.

78. The CHAIRMAN said that that suggestion might not be practical because the report was so brief. It would be preferable for the Committee simply to send Belize a copy of its guidelines, together with a number of sample reports.

79. It was so decided.

The meeting rose at 12.25 p.m.

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COMMITTEE AGAINST TORTURE

Seventh session

SUMMARY RECORD OF THE 92nd MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 13 November 1991, at 4 p.m.

Chairman: Mr. VOYAME

CONTENTS

Consideration of reports submitted by States parties under article 19 of the Convention (continued)

Initial report of the United Kingdom (continued)

Organizational and other matters (continued)

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GE.91-14015/3964B

The meeting was called to order at 4.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Initial report of the United Kingdom (CAT/C/9/Add.6) (continued)

1. Mr. MORRIS (United Kingdom) said he regretted that the texts of the legislation on torture had not been annexed to the report, as his Government had intended. The texts would be sent with the next report. The report drawn up by the European Committee for the Prevention of Torture following its visit to the United Kingdom in 1990 - a confidential report communicated only to the State concerned - would be made public, together with his Government's detailed reply, subject to the agreement of the European Committee for the Prevention of Torture.

2. Mrs. EVANS (United Kingdom), replying to a request by several members of the Committee, read out section 134 of the Criminal Justice Act 1988:

"Section 134.

(1) A public official or person acting in an official capacity, whatever his nationality, commits the offence of torture if in the United Kingdom or elsewhere he intentionally inflicts severe pain or suffering on another in the performance or purported performance of his official duties.

(2) A person not falling within subsection (1) above commits the offence of torture, whatever his nationality, if

(a) In the United Kingdom or elsewhere he intentionally inflicts severe pain or suffering on another at the instigation or with the consent or acquiescence:

(i) Of a public official; or

(ii) Of the person acting in an official capacity; and

(b) The official or other person is performing or purporting to perform his official duties when he instigates the commission of the offence or consents to or acquiesces in it.

(3) It is immaterial whether the pain or suffering is physical or mental and whether it is caused by an act or an omission."

3. Subsections (4) and (5) of section 134 applied and developed article 1, paragraph 1, of the Convention against Torture.

4. The members of the Committee would note that section 134 of the Criminal Justice Act was very close in substance and form to article 1, paragraph 1, of the Convention. The only differences related to "lawful sanctions", which had been adapted in section 134 to English law concepts, and the absence from that

section of any mention of the possible purposes of torture. To secure a conviction in proceedings in the United Kingdom, it was enough for a person to have inflicted severe physical or mental suffering. The penalty for a person found guilty of torture was life imprisonment (sect. 134, subsect. (6)).

5. A question had been asked about administrative measures: they were measures establishing standards in respect of arrest and detention in order to ensure that persons in police detention or custody were not exposed to ill-treatment. There was, for instance, a code of police practice which guaranteed that complaints were investigated and police officers found guilty of an offence were subject to disciplinary or other measures. It was important that the police should realize that they could not break the law with impunity.

6. The Criminal Justice Act 1988 also applied in Scotland, where, in addition, persons guilty of torture could be prosecuted for a number of other offences under Scots law.

7. The members of the Committee had requested an exact definition of the offence of assault: it was "any act done, intentionally or recklessly, which causes another person to apprehend immediate and unlawful violence". It was a common law offence. In England, Wales and Northern Ireland, persons guilty of torture could also be prosectued for one of the offences under the Offences against the Person Act 1861.

8. In connection with proceedings for assault in the Sheriff Court (para. 29 of the report), she explained that, in Scotland, the offence of assault, where it involved less serious injury, could be tried by the Sheriff Court, which could punish a guilty person by up to 3 years' imprisonment. However, if the Sheriff Court considered that the sentence would be inadequate to the seriousness of the offence, it was empowered to refer the case to a higher court.

9. With regard to the question of corporal punishment in schools, the situation differed in publicly funded and independent schools. In publicly funded schools, corporal punishment had been abolished by the Education No. 2 Act 1986. The Government had so far taken the view that fee-paying parents of children in independent schools were in a better position to express their convictions. It should be noted, however, that the matter was currently being considered by the European Commission of Human Rights in Strasbourg.

10. She explained that the role of the prosecutor was to decide whether proceedings should be instituted. Under section 135 of the Criminal Justice Act, in England, Wales and Northern Ireland the Attorney-General's consent was required for proceedings for an offence under section 134.

11. With respect to the implementation of article 3 of the Convention, she said that United Kingdom legislation met the requirements of that article. The law guaranteed in particular that, when an extradition request was made by a country where torture might well occur, the person concerned would not be extradited. Sections 6 and 12 of the Extradition Act 1989 set out the particular circumstances in which a person might not be extradited, but the

Secretary of State was empowered to refuse extradition for reasons other than those set out in that Act. He also had the right to make exclusion orders (para. 22 of the report). When his decisions affected a person's fundamental right to life, they could be contested in the courts, which were particularly vigilant and did not hesitate to quash orders to return. As to the implementation of the principle of aut dedere aut punire and the jurisdictional extent of the Criminal Justice Act under section 134, the courts of Great Britain and Northern Ireland had wide extraterritorial jurisdiction to deal with any person present in the territory of the United Kingdom, regardless of the nationality of the offender or of the victim. A person who was not extradited would be prosecuted if there was sufficient evidence to warrant proceedings being taken. So far, no proceedings had been taken for torture under section 134.

12. Replying to a question about the concept of "political offence", which was referred to in section 6 of the Extradition Act 1989, she said that, to her knowledge, there was no exact definition of the offence either in the United Kingdom or at the international level. It had been said that the crime must connote opposition to the Government of the requesting country on some issue connected with the political control or government of that country.

13. As for the meaning of "oppression", she said that section 76 of the Police and Criminal Evidence Act 1984 defined it as including "torture, inhuman or degrading treatment, and the use or threat of violence (whether or not amounting to torture)". Where it was represented that a confession had been so obtained, the court was required not to allow the confession to be used unless it had been established by the prosecution that it had not been obtained by such means. It was therefore for the court to decide whether there had been an element of oppression, for instance, in an interrogation. Section 11 of the Northern Ireland (Emergency Provisions) Act 1991 did not use the term "oppression", but explicitly referred to torture, inhuman or degrading treatment and to violence or threat of violence.

14. Some members of the Committee had asked whether article 15 of the Convention was applied with respect to witness statements. The matter was governed by section 78 of the Police and Criminal Evidence Act, by article 76 of the Northern Ireland Police and Criminal Evidence Order and by the general law on the exclusion of evidence. The statement of a witness to the police was admissible only with the consent of the accused. If he contested the statement, the witness had to come to court and give oral testimony. To that extent, the statement that the witness had given to the police was irrelevant. If the witness confirmed his earlier statement in oral testimony, he could be challenged by the defence. However, it was inconceivable that a person would be convicted solely on the basis of testimony.

15. Explaining paragraph 33 of the report, she said that the provisions applicable to members of the armed forces kept pace with substantive or procedural changes in civil law. Section 70 of the Army Act 1955 provided for action to be taken against army personnel who had committed acts of torture. Nevertheless, the dominant power with respect to acts of torture committed by members of the armed forces was the Chief Officer of Police, who decided whether or not to take action. If he decided not to do so, the military authorities would try the person concerned.

16. With regard to compensation for the victims of beatings and assaults, she referred the members of the Committee to paragraph 107 of the report and explained that compensation was not confined to cases of serious assault amounting to torture. She also explained that, when an offender was insolvent, the court could grant an ex gratia payment to the victim.

17. Mr. CAFFAREY (United Kingdom), referring to paragraphs 25 and 26 of the report on the question of immigration, said that the United Nations Convention relating to the Status of Refugees and the Convention against Torture were applicable in quite different ways. Exceptional leave to remain in United Kingdom territory was granted to ensure protection for all persons in humanitarian cases.

18. Replying to Mr. Burns, Ms. Chanet and Mr. Mikhailov, who had raised the question of prisoners' suicide, he said that his Government and the prison administration were greatly concerned at developments, so much so that the Home Secretary had called for an inquiry into the matter. The inquiry report, published in December 1990, had recommended changes in the prison system; those recommendations overlapped with those of another report, issued in September 1991 and drawn up by Lord Justice Woolf. The Government had published a white paper entitled "Custody, Care and Justice", which endorsed the recommendations of the two reports and recommended a far-reaching reform of the prison system in England and Wales. Those reforms should help to alleviate the problem of suicide and self-harm in prisons, for unquestionably poor prison conditions would only worsen the state of a prisoner who was depressed or suicidal.

19. His Government was increasingly stressing the general improvement of conditions of detention for all prisoners, as shown by the drafting of a code of health standards. However, those general measures needed to be reinforced by specific prevention measures, such as the establishment of more suicide prevention groups, improved reception procedures, training and the increased involvement of the Samaritans. He gave statistics on the number of suicides in United Kingdom prisons. In 1985, there had been 29 suicides; in 1986, 21; in 1987, 46; in 1988, 37; in 1989, 48; in 1990, 50; and, as at 11 November 1991, 37. There had been a question about the use of strip cells for suicidal persons. The guidance given to prison medical officers strongly discouraged that practice, but it was recognized that it might be necessary for short periods. None the less the Government was aware that that solution was not satisfactory.

20. In reply to a question from Mr. Perlas, he confirmed that suicidal prisoners could be referred to a psychiatrist. The prison medical officers were responsible for the mental and physical health of the prisoners.

21. In reply to a question from Mr. Khitrin, he said that, in the last survey on the implementation of the United Nations Standard Minimum Rules for the Treatment of Prisoners, it had been established that the United Kingdom applied all but a small number of the rules, with a few exceptions, such as those relating to the separation of categories of prisoners. When there was only partial implementation of the rules, it was for budgetary or technical reasons. Similarly, the United Kingdom complied with all but a handful of the

European prison rules. The United Nations Standard Minimum Rules were reflected in the Prison Rules 1964, which applied to England and Wales; similar rules applied in Scotland and Northern Ireland.

22. In reply to a question from Mr. Dipanda Mouelle, he explained that prison staff were never armed and that, in the event of serious disturbance, the police were called in.

23. With regard to articles 60 and 61 of the initial report of the United Kingdom, he said that training for law enforcement personnel stressed the importance of never abusing their authority and never ill-treating the persons in their care. As to prison medical officers, the Prison Standing Order No. 13, which specifically covered health questions, repeated the United Nations Standard Minimum Rules, which prison staff had to observe at all times. He agreed, however, in the light of the comments of several members of the Committee, that it would be sensible to see whether the current provisions in the United Kingdom did correspond to the country's obligations under article 10 of the Convention.

24. Replying to a question from Mr. Mikhailov, he said that the term "child care employers" in paragraphs 160 et seq. of the report applied to all those responsible for the welfare of children, including local authorities and public or private organizations who ran children's homes. In the event of a complaint of ill-treatment, an inquiry had to be carried out with the participation of an independent person.

25. In reply to another question from Mr. Mikhailov, he confirmed that the Mental Health Act Commission was not a judicial body, but an independent statutory body.

26. Mr. Perlas had expressed concern at the provisions of the Criminal Procedure Insanity Act 1964. That Act had been replaced by the Criminal Procedure, Insanity and Unfitness to Plead Act 1991, which provided many more possibilities for a person recognized unfit to plead, including guardianship, discharge into the community under supervision, etc. In the case of a prisoner transferred to a hospital, the restrictions applied for the period of the initial sentence; the matter was then for the hospital or the social services.

27. Mr. MORRIS (United Kingdom) said that he would deal with all the questions covering Northern Ireland and, in particular, the powers of the police, detention and some aspects of the judicial process. In that connection, the Government of the United Kingdom fully understood the concerns of the Committee. For its part, the Committee should try to understand the situation in Northern Ireland. As stated in the report of the United Kingdom, almost 2,000 persons had lost their lives in Northern Ireland since 1974. Even in those threatening circumstances, the United Kingdom wished it to be known that it fully accepted its obligations under the Convention and welcomed the possibility of responding to the probing questions of the Committee. The United Kingdom hoped that the Committee would accept that the measures introduced - sometimes very reluctantly - corresponded to the reality of the

situation and did not infringe either the spirit or the letter of the Convention. In all cases, measures that deviated from the usual practice of the United Kingdom were subject to an annual parliamentary review.

28. Replying to a question from Mr. Dipanda Mouelle, he said that the independent advisers referred to in paragraph 23 of the report were generally persons of high standing - experienced lawyers or members of the House of Lords, for instance - acceptable to all political parties.

29. In reply to Mr. Khitrin, he said that the principal power of arrest was that of the police, whose powers were laid down in statutory form and were limited because a warrant was required to arrest a suspect. A police officer must have reasonable cause to suspect someone of having committed or to be about to commit a serious offence in order to make an arrest without a warrant. Similar powers of arrest might be exercised by other authorities, such as customs and excise officers and members of the armed forces. The powers of the armed forces were very limited: they could detain a suspect - for a maximum of four hours in Northern Ireland - for the sole purpose of identification. In all cases, the suspect had to be transferred to a police station.

30. Arrest was subject to a code of conduct, any infringement of which could result in disciplinary measures. There was a separate regime for the interrogation of terrorist suspects in Northern Ireland, under section 14 of the Prevention of Terrorism (Temporary Provisions) Act 1989. Under those provisions the police were entitled to arrest and detain a person for interrogation, on reasonable suspicion of involvement in terrorist activity, for an initial period of 48 hours. Approval for a further period of five days might be authorized by the Secretary of State in certain circumstances. The need for continued detention must be reviewed every 12 hours by an officer. Suspects had statutory rights, including the right to have friends or family members informed of their arrest and to consult a solicitor in private. Access to a solicitor might be delayed for 48 hours in certain circumstances laid down in the legislation. In addition, conditions of detention were regulated by the Code of Conduct of the Royal Ulster Constabulary set out in the guide to the emergency powers, which suspects in custody could consult. The guide was soon to be replaced by a statutory code of conduct which the Secretary of State was required to draft under section 61 of the Prevention of Terrorism Act.

31. The interrogation of terrorist suspects was closely regulated. It was monitored by a closed-circuit television system under the supervision of a uniformed police officer. Detailed custody records had to be opened as soon as practicable for each person in detention and they had to be reviewed periodically by a police officer. If there was a complaint of ill-treatment, a report had to be made to an officer of the rank of inspector or above who was not connected with the investigation. In the event of suspected use of force, a medical officer had to be called immediately. Written interview records had to be made, timed and signed by the maker. In any period of 24 hours, a detained person must be allowed a continuous period of at least 8 hours' rest free from questioning, travel or any interruption.

32. Mr. Burns had mentioned the possibility of video recordings of interrogation. The Government was opposed to the introduction of such recordings, which it considered might jeopardize the interview procedure. Since interrogation was designed to collect intelligence, it was important to leave the person interrogated some room for manoeuvre.

33. The question of a suspect's access to a solicitor during police detention had been raised. It was recognized that that question caused concern. Provisions existed to have the family of an arrested suspect informed of his whereabouts and such information had to be given within 48 hours of the arrest. In a few specific circumstances, the time limit could be extended beyond 48 hours, when authorization had to be made by a police officer and the detainee informed in writing.

34. Several members of the Committee had expressed interest in the possibility, currently being studied, of an independent commissioner responsible for inspecting the holding centres in which terrorist suspects were interrogated. The idea had arisen during the debate on the Northern Ireland (Emergency Provisions) Bill. Discussions were going on between the Government and the police as to how such a scheme might operate in practice. The objective was to achieve an effective scheme which would command public confidence.

35. The project was still in the formative stage, but certain features had already emerged. The commissioner would have access at any time to the holding centres; he would ensure that the procedures relating to the treatment of terrorist suspects were being followed and that the code of practice which the Government was preparing on the treatment of terrorist suspects was also being followed. The Government would be studying the project with a number of interested organizations. Such a system might operate in the same way as the arrangements for the lay visiting of police stations and the boards of visitors which were able to interview inmates in prison at any time. That system was in force in England and Wales.

36. Another question had related to the detention of asylum-seekers. The power to detain was used very sparingly and such detention was closely followed by the Immigration Service and the Home Office Immigration Department. Any complaint was transmitted directly to the Home Secretary.

37. Several members of the Committee had expressed concern about attacks on the right to silence in Northern Ireland. Prior to the adoption of the Criminal Evidence (Northern Ireland) Order, which had changed the law in Northern Ireland, the law there, as in England and Wales, had precluded the prosecution or the trial judge from suggesting that an adverse inference might be drawn from the fact that an accused person had chosen to remain silent when questioned by the police, even though an innocent person might reasonably have been expected to proclaim his innocence. Before the adoption of the new Criminal Evidence (Northern Ireland) Order, the Government had long debated the previous law in the light of the seriousness of terrorist violence and the difficulties faced by the police in bringing to justice persons who had been trained in resisting police questioning. In no sense was the 1988 Order an attack on the right to silence: no one was obliged to incriminate himself or to make a statement. The Order was merely a limited measure which removed an

advantage enjoyed by a person who refused to answer any questions and sought to bring a police investigation to a halt. There were only four instances in which such inferences might be drawn and they were set out in paragraph 71 of the report.

38. A research programme was being carried out in collaboration with the Royal Ulster Constabulary and the courts to determine the effects of the Order in relation to terrorist crimes. The research included a data-collecting exercise over a period of months. It was too early to assess whether the provisions of the Order were having any effect on the decisions of the courts, but the Government would consider the results of the research. Meanwhile, it believed that the modification of the law had been necessary and proportionate to the gravity of the situation in Northern Ireland.

39. As to the question whether there were any plans to extend the modifications to the rest of the country, he wished to rectify the information given in paragraph 73 of the report. The Government had since established a Royal Commission on Criminal Justice to consider the opportunity available for an accused person to state his position and how far the courts might draw inferences from the silence of an accused person. The Government would await the findings of the Royal Commission before considering the matter further.

40. Several members of the Committee had asked questions about the police complaints procedures. Paragraphs 140 to 156 of the report sought to deal with those matters. In England and Wales, the number of complaints had risen, but the number of substantiated cases had dropped. Complaints were the subject of an annual review and statistical returns.

41. In Northern Ireland, there had been an independent commission for police complaints since 1988. Its powers went beyond those of the Police Complaints Authority in Great Britain, reflecting the additional policing difficulties in Northern Ireland. It could decide whether an investigation should be carried out into a complaint; such an investigation was mandatory for serious cases. In the Government's view, the commission constituted an independent and effective complaints mechanism which had strengthened the relationship between the Royal Ulster Constabulary and the public. Its primary task was to ensure that complaints about the behaviour of police officers were thoroughly investigated and appropriate disciplinary action was taken. The commission was empowered to approve or disapprove the choice of investigating officer and decide whether he should be appointed either from within the Royal Ulster Constabulary or from outside. It could also appoint one of its members to take personal responsibility for the supervision of a particular investigation and to ask for progress reports at any time. It had the power to direct where necessary that the inquiry should follow a particular course and that the investigator should carry out a more searching examination of points already considered. The commission informed the complainant of the results of the investigation. It also had the power to insist that disciplinary charges should be preferred against a member of the Royal Ulster Constabulary who had been the subject of a complaint.

42. Mr. Burns had expressed concern about the possibility of trial without jury in the Diplock courts, which were named after the judge with whom they had originated. The Government of the United Kingdom accepted that the

solution was not ideal and would wish to return to jury trial in all cases. He noted with satisfaction, however, that, even in the difficult political situation, for over four years, more than 70 per cent of criminal cases had been tried before a jury. He was unable to give the number of Diplock convictions which relied wholly or mainly on confession evidence, but a significant majority of defendants in such courts pleaded guilty. Moreover, acquittal rates compared favourably with the rates in jury trials.

43. The Government of the United Kingdom considered that, in such trials, appropriate safeguards were provided to defendants: the judge had to give his reasons in writing and the defendant had an automatic right to appeal to a three-judge court presided over by a Lord Justice. The court re-evaluated in full all the evidence given before the court of first instance.

44. In reply to another question from Mr. Burns, he said that allegations of ill-treatment in the document from Amnesty International dated November 1991 would be investigated by the relevant branch of the Royal Ulster Constabulary under the auspices of the independent commission for police complaints in Northern Ireland. Amnesty International would acknowledge that the United Kingdom Government had always sought to respond fully to the allegations which it raised. It would therefore see to it once again that the inquiries were carried out with due regard for the law and that disciplinary measures were taken against guilty parties.

45. His Government took particular care to safeguard the right of any injured party to redress. Despite the stress to which Northern Ireland was subject, it was nevertheless a State where the rule of law prevailed and the Government ensured that redress was granted to any victim of an inhuman or degrading action, even if the guilty party had been disciplined. Different standards of proof applied in disciplinary and civil proceedings. The independent commission for police complaints in Northern Ireland could in fact act spontaneously and supervise an inquiry without a complaint having been received. On the other hand, disciplinary charges were laid against a police officer only when a complaint had been received and charges preferred against him.

46. Unfortunately, because of lack of time, he was unable to give further details about the amounts of compensation awards to victims and the kinds of compensation granted. However, he could say that Brian Gillen had accepted the sum of £7,500 as compensation.

47. He hoped that the replies given by the members of his delegation would enable the Committee to appreciate the constant endeavours of the United Kingdom to observe the provisions of the Convention in full.

48. The CHAIRMAN (Alternate Country Rappporteur) thanked the members of the United Kingdom delegation for the care they had taken in preparing such detailed replies within a particularly short time. He would be grateful if they could supply written information about disciplinary measures or criminal proceedings taken against police officers guilty of ill-treatment.

49. Mr. KHITRIN said that he welcomed the efforts made by the United Kingdom delegation to provide such detailed replies to each of the questions asked. All the same, he still had the impression that the United Kingdom did not observe the basic obligations imposed by the Convention, particularly with regard to the treatment of prisoners, as evidenced by the number of persons held incommunicado in inhuman conditions and the particularly high suicide rates in prisons. He therefore asked the members of the Committee to bear those points in mind in formulating their conclusions.

50. Ms. CHANET congratulated the delegation of the United Kingdom on the clarity and precision of its replies. She asked for a copy of section 134 of the Criminal Justice Act 1988, which would allow her to see whether United Kingdom legislation was in conformity with the provisions of the Convention. She still had some doubts as to whether the Convention was being implemented in particular areas and in some parts of the territory.

51. She had noted the assurance given by Mr. Morris that his country's authorities would not risk contravening article 3 of the Convention on extradition, but was concerned at the absence of any legal basis for that statement. Specific provisions should be included in legislation or administrative circulars in order to prevent extradition when it would expose the person concerned to a risk of torture.

52. With regard to corporal punishment for children in schools, homes or boarding schools, she was surprised that the legislation protecting children applied only to publicly funded schools, even though, in independent schools, it was for the parents to ensure the protection of their child in the contract they signed with the school management. A case involving the disturbing problem of that dichotomy had in fact been brought before the European Court of Human Rights in Strasbourg.

53. She was also concerned at the frequency of suicide in prisons and invited the United Kingdom authorities to monitor the conditions of detention of persons with suicidal tendencies.

54. With respect to Northern Ireland, she welcomed the idea of appointing an independent commissioner to monitor the sensitive holding centres where persons in custody might risk ill-treatment during interrogation. That was a good idea, but the commissioner must be given the necessary powers to report offences committed and ensure that the guilty parties were punished.

55. She was not convinced by the arguments that priority was being given to respect for the Convention in the emergency regime applied in Northern Ireland. On the contrary, it appeared that the major concern of the Government of the United Kingdom was to fight terrorism and, to that end, it was using all available legal means to collect evidence. It was impossible to be unaware of the consequences of that situation and the increased danger of torture that was associated with any encroachment on the safeguards granted to citizens; moreover, the number of complaints received confirmed that fear.

56. Mr. SORENSEN said he hoped that the Committee's conclusions would mention the United Kingdom Government's intention to publish the confidential report of the European Committee for the Prevention of Torture.

57. Mr. GIL LAVEDRA thanked the members of the United Kingdom delegation for the quality of their replies. Like Ms. Chanet, he wished to receive a copy of section 134 of the Criminal Justice Act, in which he hoped to find an answer to the questions raised in his mind by paragraph 39 of the report concerning the application of article 5 of the Convention, which dealt with the territorial jurisdiction of States parties.

58. He too welcomed the plan to appoint an independent commissioner to monitor holding centres where interrogation was carried out. Provision should also be made for medical examinations in order to provide better protection against torture.

59. In his view, it was a matter of great concern that silence could be regarded as an accusation against an interrogated person, whose right "not to be compelled to testify against himself" was enshrined in article 14 of the International Covenant on Civil and Political Rights. It was always better to extend the discretionary power of the judge to evaluate evidence rather than interpret the silence of the accused. In some circumstances, drawing improper conclusions from silence more or less amounted to denying a suspect his right not to make a statement.

60. Nevertheless, he congratulated the United Kingdom authorities on the steps they had taken to ensure that the Convention was observed in full.

61. Mr. BURNS (Country Rapporteur) said that, if the case of Northern Ireland was separated from the rest of the country, it could reasonably be said that the Government of the United Kingdom met in virtually every respect the obligations contained in the Convention. On the other hand, the implementation of the Convention in Northern Ireland was far from satisfactory. Although it was true that each year Parliament reviewed the need to maintain the emergency regime in Northern Ireland, it had been in effect for nearly 20 years and two generations of policemen had known no other.

62. He had not been persuaded by the reasons given by the members of the United Kingdom delegation for the absence of video recordings. The fact that no suspect was entitled to have his solicitor present during interrogation was also a cause for great concern. The arguments put forward to justify the refusal of the right to silence were all the less acceptable because the suspect was deprived of the assistance of a solicitor. To all intents and purposes, the United Kingdom was deliberately setting aside one of the basic protections guaranteed throughout the civilized world. Even the extreme circumstances in Northern Ireland in no way justified such a denial of basic human rights.

63. As country rapporteur for the United Kingdom, he had received a list, compiled by a solicitor, of 30 persons who had received compensation for ill-treatment over a two-year period. He would transmit the list to the United Kingdom delegation. The Government of the United Kingdom did not seem to be miserly about compensation for torture victims.

64. In conclusion, he said that the openness of the report (CAT/C/9/Add.6) and the comments of the United Kingdom delegation had been very useful. The members of the Committee still had serious concerns about the situation in Northern Ireland, but they very much hoped that they would be allayed for good by the next report of the Government of the United Kingdom.

65. The CHAIRMAN (Alternate Country Rapporteur) said that he could not yet take a decision on whether United Kingdom legislation fully met the provisions of the Convention, particularly those of article 3 on extradition. A member of the United Kingdom delegation had said that further information on the implementation of article 10 would be provided. It seemed that there was still much to be done in respect of training for law enforcement personnel.

66. The idea of requesting an independent commissioner to inspect interrogation centres was welcome, but he pointed out that, in accordance with article 11 of the Convention, such monitoring must apply to interrogation rules as well as to methods and practices.

67. In connection with the emergency regime which was continuing in Northern Ireland, he drew attention to article 2 of the Convention, which provided that "No exceptional circumstances whatsoever ... may be invoked as a justification of torture".

68. He was surprised at the differences between the regulations in the United Kingdom and Wales, on the one hand, and in Northern Ireland, on the other. By virtue of article 2, paragraph 1, the State party had to take all necessary measures to prevent acts of torture in its territory; in that regard, the presence of a solicitor during interrogation was an effective safeguard.

69. He hoped that the conclusions of the country rapporteur and his alternate would reflect all the concerns of the members of the Committee who had all paid a tributed to the frank and careful way in which the information had been provided by the United Kingdom Government and its delegation.

70. The members of the United Kingdom delegation withdrew

71. The meeting was suspended at 5.40 p.m. and resumed at 5.50 p.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

72. The CHAIRMAN announced that Ms. Chanet had been able to put off the engagements that would have prevented her from taking part in the work of the Committee. Contrary to what had been said at the opening meeting of the present session (CAT/C/SR.88), she would therefore act as country rapporteur for Cameroon and alternate country rapporteur for Bulgaria.

The meeting rose at 5.55 p.m.

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Seventh session

SUMMARY RECORD OF THE 93rd MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 14 November 1991, at 10 a.m.

Chairman: Mr. VOYAME

CONTENTS

Consideration of reports submitted under article 19 of the Convention (continued)

Initial report of the Czech and Slovak Federal Republic

Initial report of the Socialist People's Libyan Arab Jamahiriya

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Initial report of the Czech and Slovak Federal Republic (CAT/C/7/Add.12)

1. At the invitation of the Chairman, Mr. Karabec, Mr. Reis, Mr. Dusek and Mr. Pinter (Czech and Slovak Federal Republic) took places at the Committee table.

2. Mr. KARABEC (Czech and Slovak Federal Republic) informed the Committee that, since his country signed the Convention against Torture on 8 September 1986, the internal political and social situation had changed radically as a result of the abolition of the totalitarian communist regime. The November 1989 revolution had led to the establishment of a democratic social system and of a State governed by the rule of law. The previous regime had formally declared respect for international human rights conventions, but it had often violated the provisions of those instruments, and that was why the Czech and Slovak Federal Republic paid so much attention to legal guarantees to ensure that all articles of the Convention were consistently observed in practice.

3. The report before the Committee (CAT/C/7/Add.12), which described the main provisions of the Czechoslovak legal system concerning matters relating to the Convention, replaced the original text of the report and reflected the current situation in the Republic. He would also provide further information relating in particular to the field of penology, as most cases of cruel or degrading treatment occurred in corrective institutions, either during custody or imprisonment.

4. Czechoslovakia was currently preparing two bills, the first of which concerned terms of custody, which had, in the past, been regulated by a custody term order issued by the Ministry of Justice and the Prosecutor General. The bill specified which civil rights of persons remanded in custody could be restricted and to what extent, as well as the conditions for the period of custody. It excluded any treatment that would be inconsistent with the Convention in order to guarantee a humane term of imprisonment and respect the presumption of innocence of the prosecuted person.

5. The second bill related to the establishment of a primarily civilian Prison Guard to replace the Correction Corps and to be in charge of the enforcement of custody and prison terms. The bill would enumerate the coercive measures which prison guards could take against persons remanded in custody or serving a prison term and would stipulate that such measures must not be inconsistent with article 1 of the Convention.

6. The number of persons in prison in Czechoslovakia had declined from 40,000 in 1988 to about 19,000 as a result of a broad amnesty declared by President Havel in early 1990. Unfortunately, the number of offenders was expected to increase on account of growing criminality. The 11,000 members of the prison staff in Czechoslovakia had been evaluated in 1990 to determine their skills and moral aptitude because some of them had been involved in

human rights violations before the November 1989 revolution. As a result of that evaluation, some 7 per cent of prison staff had left the prison service in the Czech Republic. A similar process was under way in the Slovak Republic in order to ensure that persons involved in the treatment of offenders were fully qualified, both professionally and morally.

7. Act No. 179/1990 on the Execution of Prison Sentences stressed the need for greater protection of the human dignity of convicts and its article 1, relating to the purpose of imprisonment, had been supplemented by a request that the inherent dignity of convicts as human beings should be respected and by a ban on cruel or degrading treatment and punishment.

8. Towards the end of 1990, the situation in corrective institutions in the Czech and Slovak Federal Republic had been inspected by representatives of Helsinki Watch, which had submitted its official report to the Czechoslovak authorities. It had found that the situation in the country's prison system had improved radically in comparison with that situation before 1989, when human rights violations had been commonplace. Despite some shortcomings in material conditions of detention, which were attributable to the state of neglect of prisons, the representatives of Helsinki Watch had appreciated the resolute and persistent efforts of the prison system's managerial bodies to reform the conditions in prisons. The representatives of Helsinki Watch, who had inspected a number of prisons and spoken to both prisoners and guards, had found no instances of violations of human rights or of treatment which would be inconsistent with the spirit and letter of the Convention. He would distribute a copy of the report by Helsinki Watch to the Committee.

9. On 10 July 1991, the Parliament of the Czech and Slovak Federal Republic had adopted Act No. 333/1991 on the Federal Police Corps and the Castle Guards Corps and Act No. 334/1991 on the service employment of members of the Federal Police Corps and the Castle Guards Corps, which had both entered into force on 27 August 1991. Those new legal provisions were entirely in keeping with the articles of the Convention.

10. A major reorganization of the police force involving the establishment of a Federal Police Corps and a Police Corps in each Republic was under way in the country. The members of the police force had been evaluated by professional and independent civil commissions. The aim of the reorganization was to bring the police force under efficient public control to be exercised by members of special committees both in the Federal Assembly and the national Parliaments.

11. Article 7.1 of Act No. 333/1991 established the obligation of police officers to respect the honour, reputation and dignity of persons, as well as their own honour, and to prevent the commission of any unreasonable wrongs and infringements of individual rights and freedoms. Article 24.3 of Act No. 334/1991 made it the duty of a policeman to refuse to obey an order of his superior if, by obeying it, he would commit a criminal offence. That provision established the principle that an order from a superior officer could not justify torture and ensured that the offender could not evade responsibility for the crime.

12. When the Czech and Slovak Federal Republic had ratified the Convention in 1988, it had made a reservation to article 20 concerning cooperation between States parties and the Committee in verifying information on the systematic practice of torture and it had still not recognized the Committee's competence under article 22 to receive and consider communications from individuals. He informed the Committee that his country intended to withdraw its reservations to article 20 of the Convention and to make the declaration required by article 22. It also intended shortly to ratify the European Convention for the Prevention of Torture and Other Cruel or Degrading Treatment or Punishment, which provided for inspections of establishments in which persons were deprived of their liberty, and would support the elaboration and adoption of an additional protocol to the Convention against Torture to establish similar international monitoring machinery.

13. Mr. MIKHAILOV (Country Rapporteur) commended the Czechoslovak delegation on the additional information it had provided and said that all members of the Committee were aware of the legal situation in the Czech and Slovak Federal Republic, which had become a classical European democracy after the overthrow of the totalitarian system. He expressed his satisfaction that, during the past two years, the Czechoslovak Government had adopted legislation to ensure conformity between its domestic legislation and the Convention.

14. Paragraph 7 of the report described the Charter of Fundamental Rights and Freedoms as a fundamental legal regulation providing protection against acts which the Convention aimed to suppress. He asked whether the Charter contained any specific provisions concerning torture and whether it incorporated article 5 of the Universal Declaration of Human Rights or article 7 of the International Covenant on Civil and Political Rights. He also wished to know more about the substantial amendments to the Penal Code and the Code of Penal Procedure mentioned in paragraph 9 and whether they related not only to political offences, but also to acts of torture.

15. In paragraph 15, it was stated that there was no need to define the specific offence of torture in Czechoslovak penal law, and that argument had also been put forward in paragraph 40. He asked whether the provisions of Czechoslovak penal law fully covered acts of torture as defined in article 1 of the Convention. Paragraph 18 referred to section 158 of the Penal Code on abuse of the authority of a public official, but it appeared to be a fairly abstract and general provision. He asked whether there had been any cases in which officials had been prosecuted for acts of torture under section 158. The other sections of the Penal Code referred to in paragraph 41 in support of the claim that Czechoslovak law was in conformity with the requirements of article 4 of the Convention were also of a general nature and none of those cited made any specific mention of torture. He wished to know whether it was possible to classify torture as a specific offence under those provisions. The prison sentence of six months to three years for officials guilty of offences under section 158 of the Penal Code, as mentioned in paragraph 18, also appeared to fall short of the "appropriate penalties" required by article 4 of the Convention.

16. Section 3, paragraph 2, of Act No. 40/1974 on the National Security Corps allowed the NSC to interfere with the rights and freedoms of citizens if required for the protection of the social and State system, public order or

the security of persons or property. That provision was very broad and he wondered whether there were any grounds for restricting the authority conferred on the NSC by the Act. He also inquired how the requirement of section 15, paragraph 1, of the Act that members of the NSC should respect the honour, reputation and dignity of citizens was enforced in practice. He would appreciate information on how the acts of the National Councils of the Czech and Slovak Federal Republic and of the Federal Assembly on the police, which were referred to in paragraph 20 would regulate the activities of the police in combating torture and on how the principle of the rule of law was to be guaranteed. In addition, he wished to know whether there were any specific cases in which a member of the NSC had refused to obey an order from a superior on the grounds that it would mean committing a criminal offence.

17. Paragraph 22 of the report generally described the legal remedies available to Czechoslovak citizens, but he would appreciate statistics on the number of cases in which the courts and the prosecutor had provided protection for the rights of citizens, not only in general, but in relation to torture as well. The provisions relating to loss or injury caused by unlawful official action were described in paragraph 25 of the report, but the Committee would require more detailed information on how compensation machinery operated in practice.

18. Paragraph 27 of the report recognized that most violations of the Convention occurred in correctional institutions and in military establishments, but it contained no specific data, a shortcoming which the Czechoslovak delegation could remedy by providing additional information to that given in paragraph 28 on the number of cases of ill-treatment of persons sentenced to prison terms since 1989. In order to substantiate the claim made in paragragh 31 that torture was relatively rare in Czechoslovakia, the delegation might also provide data on how many investigations and trials had taken place since 1990 and what sentences had been handed down for serious criminal offences amounting to breaches of the country's obligations under the Convention.

19. With regard to paragraph 34 of the report, he asked how many complaints had actually been lodged and what action had been taken on them, in how many cases the principle aut dedere aut judicare mentioned in paragraph 47 had been applied since 1987 and whether the obligation, referred to in paragraph 49, for an investigator to institute criminal proceedings "without delay" was subject to a specific deadline.

20. Ms. CHANET thanked the representative of the Czech and Slovak Republic for his introductory statement and commended the quality of the report. The reforms that had been introduced in the country over the past two years, a very short time in the life of a nation, were to be welcomed.

21. She had taken note of the Republic's intention to withdraw its reservation to article 20 and to make the declaration provided for under article 22. The Committee would be most interested to know what legislation was to be adopted, and what administrative measures taken, to give full effect to the Convention in that regard. It was true that the new Constitution would provide a good basic framework for the protection of human rights, but it

would not in itself be enough to guarantee that the spectre of torture might not rise again from the ashes of the past. That was why the Convention was couched in very specific terms.

22. Paragraph 10 of the report quoted a provision of the Code of Penal Procedure which required officials to act "in accordance with the importance and educational purpose of criminal proceedings". She would appreciate clarification of the meaning of that phrase, since criminal proceedings would have an educational purpose only after sentence had been passed; before being proved guilty, the accused person was to be presumed innocent. Was the presumption of innocence guaranteed in the Republic?

23. It was stated in paragraph 20 that laws governing the police were to be brought "more in line with international standards". Could the Committee be told how those laws were to be amended and whether "international standards" included the standards of the Convention?

24. Paragraph 23 stated that "the right of petition" was guaranteed, whereas paragraph 24 referred only to "the right to file charges". She would be interested to know what machinery existed for making petitions and what the outcome was when groups or individuals availed themselves of that right. Could the Czechoslovak delegation provide some specific examples?

25. As was often the case in reports by States parties, the report under consideration made no mention of measures taken to give effect to article 1 of the Convention. However, in view of the very precise definition of torture given in that article, it would be useful for the Committee to be provided with extracts from Czechoslovak legislation to enable them to judge whether they adequately reflected the content of that definition. It was claimed in paragraph 15 that there was no need to define the offence of torture, since current penal law covered all acts: however, the legislation quoted gave rise to some doubts. Abuse of authority by a public official, for example, was defined in section 158 of the Penal Code as acting with the intent to cause damage to another person, or to obtain unauthorized benefit, and that was not at all in line with the definition of torture in article 1. There were many forms of torture, both sophisticated and less sophisticated, that were not covered by the definitions of criminal offences referred to in paragraph 41 and including violence against groups or individuals, injury to health, murder, etc. As she saw it, the provisions quoted were not enough to satisfy the requirements of articles 1 and 4.

26. Where article 3 was concerned, much was said about extradition, but very little about expulsion and refoulement, except in relation to the 1951 Convention relating to the Status of Refugees. In fact, article 3 had been included in the Convention precisely in order to cover cases that were not within the scope of the 1951 Convention. Its object was to protect against expulsion or refoulement persons who in their country of destination were in danger of being tortured not on grounds of race, religion, nationality or politics, but simply because the country concerned practised torture systematically and had no control over the actions of its police.

27. On the question of universal jurisdiction, she was somewhat concerned by the statement in paragraph 46 that Czechoslovak law would be applicable in the

case of offences committed abroad by aliens, provided that the offence was also punishable under the law in force in the territory where it had been committed. If an act of torture was committed in a State where torture was considered normal, that State would be unlikely to punish the offence. Could the Committee be told whether the provision quoted in paragraph 45, whereby Czechoslovak law would be applicable in cases where international treaties applied, had precedence over the provision referred to in paragraph 46?

28. Paragraph 52 listed a number of exceptions to the institution proceedings for criminal offences. She would appreciate an explanation of what was meant by the words "exempt from the jurisdiction of the organs acting in criminal proceedings" in subparagraph (c); did they imply complete immunity?

29. The section of the report dealing with article 11 was somewhat brief. It would be useful for the Committee to have information on the maximum period a person could be detained in custody and on whether such a person was allowed access to counsel. Were there rules governing interrogations, covering, for example, the presence of a doctor, the time that should elapse between interrogations, contact with family and the outside world, the use of solitary confinement and how soon arrested persons had to be brought before a judge? The section should specify what guarantees detained persons enjoyed and how rules and practices in that regard were kept under review.

30. Mr. SORENSEN joined in commending the report and the oral introduction and congratulated the Czechoslovak delegation on the significant developments which had taken place in the country in the past few years.

31. Where the application of article 10 was concerned, he had been impressed to learn that the Government had got rid of some of its police officers and was endeavouring to reeducate the remainder. However, article 10 required medical as well as law enforcement personnel to be educated about the prohibition against torture. That was especially important because it was an unfortunate fact that doctors often played a leading part in performing acts of torture.

32. Where article 14 was concerned, he was glad to note from paragraph 11 of the report that a person who had suffered infringements of his right to protection of the person would be given "appropriate satisfaction" and also "pecuniary compensation". However, article 14 also required that victims of torture should be given as full rehabilitation as possible and, in his view, that should include medical rehabilitation. A rehabilitation centre for such victims had recently been set up in Prague and he would suggest that it should be given the Government's support.

33. Mr. GIL LAVEDRA said he had nothing to add to the questions that had already been raised. He wished only to congratulate the Government of the Czech and Slovak Federal Republic on the efforts it was making to adapt all its existing norms to a democratic system based on respect for human freedom and dignity.

34. Mr. BURNS said he had been most impressed by the way Czech and Slovak Federal Republic had incorporated into its new constitution the obligations it had assumed under the Convention, thus giving those obligations the highest

degree of protection. Under the Charter of Fundamental Rights and Freedoms adopted in January 1991, torture and any other cruel, inhuman or degrading treatment or punishment was prohibited. That was a more effective measure than simply enacting legislation and the country was to be commended for giving the matter such high priority. He noted that the provision in the Code of Penal Procedure governing confessions, as referred to in paragraph 66 of the report, was modelled directly on the wording of article 15 of the Convention and the Government was to be complimented on having complied so fully with its obligations in that regard.

35. He had only one question to ask: how were judges appointed in Czechoslovakia, and how was the independence of the judiciary guaranteed?

36. Mr. KHITRIN said that he also welcomed the excellent Czechoslovak report and was pleased to note the Government's intention of withdrawing the reservations it had made when ratifying the Convention.

37. He would appreciate some rather fuller information than that given in paragraph 59 as to how article 11 of the Convention was complied with in connection with the duration and conditions of pre-trial detention. Which officials were entitled to make arrests and what guarantees had persons who were detained in custody? What control was exercised over police responsible for conducting interrogations? Where return, refoulement or extradition were concerned, what legal measures had been taken to implement article 3, paragraph 2, which required the competent authorities to take into account relevant considerations, including the existence in the State concerned of a consistent pattern of gross violations of human rights?

38. With regard to article 5, he wished to know whether torture was included among offences committed abroad and whether the Czechoslovak Government could institute proceedings in the case of an offence perpetrated by a foreigner against another foreigner in another country.

39. As to article 7, he was somewhat surprised to note from paragraph 52 that persons enjoying privileges and immunities were exempted from prosecution under section 2, paragraph 3, of the Code of Penal Procedure. Why should such persons be exempt where criminal offences were concerned? He would like to know at what stage in criminal proceedings the presence of counsel for the accused was authorized. In connection with article 15, what legal provisions were there to ensure that any statement made as a result of torture could not be invoked as evidence in court?

40. Mr. DIPANDA MOUELLE said that he associated himself with the tributes paid to the report. He too would like to know how in general terms the Czechoslovak judicial system was structured. Did prison conditions comply with United Nations standards to the extent that prisoners were entitled to complain to the authorities in cases of ill-treatment or torture?

41. Referring to article 3, he asked whether Czechoslovak legislation afforded protection to foreigners threatened with expulsion and whether such persons could lodge an appeal before a court? With reference to paragraph 66, he would like to know whether "evidence obtained through unlawful coercion" was to be understood as including statements established to have been made as a result of torture under the terms of article 15.

42. Mr. PERLAS, referring to paragraph 33 of the report, noted that, under Czechoslovak law, orders from a superior could in no way justify torture. He would like to know how, in cases where subordinates refused to carry out orders by a superior, they were protected from possible retribution. What penalty would be imposed on superiors in such situations?

43. He would appreciate further details on regulations governing detention in custody, after the individual had been arrested and before he had been brought to court. Was the presence of a lawyer required during that period?

44. The CHAIRMAN congratulated the Czechoslovak delegation on a clear and detailed report. He had only a few questions to add to those already raised.

45. It would appear from paragraph 22 that the prosecutor monitored observance of the law in criminal proceedings. If that was so, how was the independence of the judiciary guaranteed? He shared Ms. Chanet's concerns regarding paragraphs 35 and 39; the requirements of article 3 of the Convention did not seem to be fully met by the provisions referred to, unless that article was taken to be applicable directly. Similarly, he feared that the provisions quoted were not sufficient to ensure that all acts of torture were regarded as criminal offences, as required by article 4; in particular, it was not clear how psychological torture was penalized.

46. With regard to article 6, paragraph 48 stated that suspects could be taken into custody even before the application for extradition had been submitted. However, the provisions of the Code of Penal Procedure quoted seemed to presuppose that a request for extradition had been found admissible. He pointed out that, according to article 6, custody could be continued only for as long as necessary to enable proceedings to be instituted.

47. As to article 10, paragraphs 56 to 58 referred chiefly to laws and regulations, but education and training, particularly of prison staff, was also crucial. With reference to paragraph 59, article 11 required systematic monitoring not only of regulations governing interrogations, but also of how those regulations were being applied. He would appreciate comments on that point.

48. The question raised by Mr. Dipanda Mouelle could perhaps be answered by reference to paragraph 67, which quoted a provision to the effect that, in the course of interrogations, the dignity of the accused person should be respected.

49. Lastly, he would like to know whether any complaints of torture or ill-treatment had been made in recent years. If so, had the perpetrators been punished, either by court convictions or by disciplinary measures, and had compensation been provided for the victims?

Initial report of Libyan Arab Jamahiriya (CAT/C/9/Add.7)

50. At the invitation of the Chairman, Mr. Hafyana, Mr. Omar, Mr. Al Mohadzabi and Mr. El Fakih Saleh (Libyan Arab Jamahiriya) took places at the Committee table.

51. Mr. HAFYANA (Libyan Arab Jamahiriya), describing the legal framework for the application of the Convention in his country, said that the provisions of the Convention were binding nationally and that, in the event of any conflict with existing domestic provisions, it prevailed over internal legislation. Any person was therefore entitled to invoke the provisions of the Convention before a Libyan court.

52. In addition, domestic legislation itself offered protection from torture and other, cruel, or degrading treatment. It provided guarantees of respect for the fundamental freedoms of the individual in general and entitled any person to complain of non-observance or abuses in that regard, in accordance with article 2 of the Civil Code. Any law which was not based on the rules of fairness could be denounced before the courts and the case could be heard in the final instance by the Supreme Court. Where article 4 of the Convention was concerned, moreover, article 435 of the Penal Code provided that any official committing or ordering torture of accused persons was liable to imprisonment. As stated in the report (CAT/C/9/Add.7), articles 431 to 434 of the Penal Code also offered protection against torture. Under article 36 of the Code of Criminal Procedure, no person could be arrested except by the competent authorities and by order of the judicial authorities. Article 30 of the Code of Criminal Procedure upheld article 13 of the Convention.

53. With regard to article 14 of the Convention, article 166 of the Civil Code provided for compensation for an individual whose rights had been violated as a means of penalizing persons in authority who had committed an error which had caused an individual harm or injury. Compensation could be requested in both civil and criminal courts.

54. Article 26 of the Great Green Document on Human Rights in the Age of the Masses recognized the right of all citizens to take legal action in the event of an infringement of their fundamental freedoms.

55. The People's Court had been established for the purpose of ensuring that justice was applied overall and providing a consolidated basis for justice and security. It was competent to hand down rulings on all matters relating to citizens' freedom and rights on the basis of the relevant sections of part 4 of the Penal Code and in cases where the matter in question had not previously been dealt with by the competent authorities.

56. Recourse to the courts was free in the Libyan Arab Jamahiriya and the courts were required to ensure that all judicial safeguards, including access to defence counsel and legal assistance, were provided.

57. Fundamental freedoms and human rights were further safeguarded by article 35 of the Provisional Constitutional Declaration, which stated that no legislation contrary to the basic principles of justice might be enacted. Legal guarantees and the functions of the Supreme Court ensured that justice was administered in accordance with those principles and with article 14 of the Convention. Domestic legislation also provided that the courts could not use confessions extracted from detained persons, such confessions were regarded by the Supreme Court as null and void. Where it deemed necessary, a court could conduct an inquiry into the circumstances of charges and the validity of statements made in the context of any case. The Supreme Court

could order the release of any detained person when the procedure adopted by the officials responsible for the detention was incompatible with legal provisions or where they had exceeded their mandate.

58. In order to supplement section IV of the report on the treatment of prisoners, he informed the Committee that the prison authorities were required to monitor prison conditions and the conduct of prison officials and were entitled to authorize other competent persons to inspect prisons. The prison authorities worked in close cooperation with the Department of Public Prosecutions in order to improve conditions of detention and to ensure the maintenance of prison standards. The Department was also authorized to take steps to prevent the ill-treatment of prisoners and to prosecute those responsible for any ill-treatment which might occur. Prisoners condemned to light sentences were placed in open prisons, where they were allowed leave of absence to return to their homes.

59. In connection with article 10 of the Convention, steps were being taken to ensure that relevant education and educational materials were available at the secondary and university levels, particularly in law faculties. Information on the prohibition of torture was widely available.

60. Generally speaking, the State tried to strike a balance between its desire to be concerned with all aspects of its citizens' lives and the citizens' wish to ensure that individual rights and freedoms were respected. Where violations occurred, the Convention could be invoked in order to safeguard rights and freedoms. In that connection, he noted that there had been specific cases where legal and disciplinary action had been taken against State officials who had exceeded their authority and where penalties of imprisonment and fines had been imposed.

61. Mr. SORENSEN (Country Rapporteur) thanked the Libyan delegation for its report and oral introduction. He wondered whether, in view of the wide-ranging nature of that statement, the text could be made available for the Committee's files.

62. He asked for clarification of the value of the Libyan currency, which was variously referred to in the report as the pound, the dinar and the dirham.

63. He wished to have further information on the way in which the Libyan political and legal system worked, since it differed so widely from that of the countries with which he was familiar. He referred to paragraph 24 of the report and asked how, in practice, the law was made and brought into force, who took the initiative and who wrote the texts.

64. Referring to the words "the police fade away" in paragraph 20, he said he believed that the Libyan Arab Jamahiriya did have police officers and wished to know how they were educated, appointed and paid, whether there was a budget for the prison and police service and who decided on its size. How was the power of the people exercised in practice?

65. He wished to know how industry functioned in practice and who took decisions, in view of the affirmation in paragraph 14 that "it is not permissible ... for one person to act as another's proxy". Moreover, did the army have no officers?

66. He also wished to know how judges were appointed and whether they could be removed, what obligations prosecutors had and who conducted investigations into crimes.

67. He asked how the Convention had been ratified. Was there a Libyan minister for foreign affairs and had the Convention been approved by the equivalent of a parliament?

68. He had understood the Libyan representative to say that the Convention had higher status than domestic law, but he would like confirmation of that fact. In some countries, the provisions of the Convention were incorporated into domestic law; other countries merely stated that it was part of domestic law. Which method had been adopted by the Libyan Arab Jamahiriya and could a text of the relevant law be made available to the Committee?

69. Paragraph 29 of the report stated that some of the national legislation was currently being amended. He hoped that the relevant articles appeared in annex IV, to document CAT/C/9/Add.7, which was, however, available only in the original Arabic. It would have been very useful if those provisions could have been included in the text of the report because they would then have automatically been translated into the Committee's working languages.

70. He asked whether the definition of torture contained in article 1 of the Convention had been incorporated into Libyan legislation.

71. Article 2, paragraph 2, of the Convention provided that no exceptional circumstances whatsoever might be invoked as a justification of torture. He had also understood from the oral introduction that, where a superior officer or official gave an order for torture, he was liable to be prosecuted.

72. Referring to paragraph 31 of the report, he asked whether all prisoners had been released on the occasion of the 1988 pardon. In some cases, a general amnesty might be accompanied by a due obedience or similar act and he would like to know whether that had been the case in the Libyan Arab Jamahiriya in 1988.

73. In connection with article 3 of the Convention, he had found no mention of refoulement and requested information on relevant legislation, on the officials responsible for decisions in that connection and on statistics.

74. With regard to article 4 of the Convention and paragraphs 33 to 35 of the report, he asked whether the entire text of the definition of torture contained in the Convention was covered by the words "uses violence" in article 431 of the Libyan Penal Code. The Convention referred to "appropriate penalties" in that context, but article 431 seemed to indicate that the maximum penalty under Libyan law was a fine not exceeding 150 pounds; he would welcome clarification on that point.

75. Paragraph 37 of the report appeared to equate torture with more general violence. However, he knew of no offence which deserved more severe punishment than torture.

76. Further information would be appreciated on the implementation of articles 5, 6, 7 and 9 of the Convention.

77. Paragraph 22 (d) of the report referred to the people's right to freedom of education, but he pointed out that article 10 of the Convention concerned the duty of the State party to ensure that relevant education and information regarding the prohibition against torture were provided. The Committee would be interested to know whether such education and information were offered at the graduate and post-graduate levels and to all categories of persons mentioned in article 10.

78. Referring to article 11 of the Convention and paragraph 29 of the report, he requested information on the current rules and methods of interrogation and the proposed amendments to the relevant legislation. Also in connection with article 11 and article 16, further information concerning prisons would be welcome, particularly on their operation.

79. He would also like to have details on the death penalty, the methods used for execution and statistics covering the previous two years. Statistics on the number of prisoners in the different types of prisons and the number of deaths in prison would be of assistance to the Committee and further information on compliance with articles 13, 14 and 15 would be useful. While he was aware that it might not be possible for the Libyan delegation to provide immediate answers to all aspects of the questions he had raised, he hoped that additional information could be made available in writing.

80. Mr. BURNS (Alternate Country Rapporteur) thanked the Libyan representative for his extensive oral introduction, which had already answered several of his questions.

81. He asked for a description of the hierarchy of the courts and their jurisdiction in the Libyan Arab Jamahiriya. Could persons suspected of an offence be held for questioning and were they held in custody before being charged; if so, for how long could they be held and by whom? More importantly, could such persons be held incommunicado?

82. He wished to know whether confessions that had been extorted were admissible in legal proceedings.

83. In connection with article 6 of the Convention, he asked what legal regime existed in Libya to deal with a foreigner suspected of having committed torture in another country.

84. As to article 7, he inquired whether Libya had universal jurisdiction to try torturers in its territory who might have committed crimes elsewhere and could not be extradited or returned, perhaps because there were strong grounds to believe that torture might be practised against them if they were returned to the country where the acts had been committed.

85. In connection with article 9 of the Convention, he asked whether Libya had mutual judicial assistance arrangements with other countries, and if so, whether such assistance extended to the crime of torture or cruel or inhuman treatment.

86. Mr. GIL LAVEDRA thanked the Libyan delegation for its written and oral reports, which had provided a wealth of information. However, he agreed with

Mr. Sorensen that it would have been an advantage for the members of the Committee to have translations of the relevant Libyan legislative texts in their working languages.

87. The report did not comply with the Committee's guidelines for the preparation of reports, which should contain a general introduction on the political and legal system of the reporting State and a second part on compliance with the Convention article by article. Although the oral introduction had provided supplementary information it had not been translated into the Committee's working languages, and that prevented members from being able to understand the legal and political system in the Libyan Arab Jamahiriya.

88. He wished to know for which offences the death penalty could be imposed and to have a description of the way the judicial system was organized.

89. Was there a possibility of suspending rights and guarantees under exceptional circumstances; if so, which authority took the relevant decision and what was the scope of the suspension?

90. Paragraphs 33, 34 and 35 of the report referred to articles 431, 433 and 434 of the Libyan Penal Code, mentioning punishments of detention. He requested information on the length of periods of detention. In accordance with article 4 of the Convention, acts of torture had to be punished by appropriate penalties.

91. He stressed that work of the Committee would be facilitated if it could be informed of the exact degree of compliance with each article of the Convention.

92. In view of the many questions put by members of the Committee which it might not be possible for the Libyan delegation to answer that day, he suggested that it would be useful if Libya could submit an additional written report.

93. Mr. KHITRIN thanked the Libyan representative for his extensive oral introduction. However, since the written report did not contain enough information on compliance with the articles of the Convention, he endorsed Mr. Gil Lavedra's request for an additional report.

94. Mr. MIKHAILOV, having congratulated the Libyan representative on his oral introduction, said that, unfortunately, the written report was not in keeping with the Committee's guidelines so that it was hard to draw any conclusions about compliance with the Convention.

95. Paragraph 29 of the report quoted various legislative provisions, but it was not clear whether those provisions related specifically to torture or whether they were general provisions protecting the individual.

96. In connection with paragraph 36 of the report, which referred to article 435 of the Penal Code, he asked whether there was a definition of torture in Libyan legislation or whether the concept embodied in the Convention was applied.

97. Like Mr. Gil Lavedra, he wished to know what punishment was provided under article 433 of the Penal Code, as referred to in paragraph 34 of the report.

98. He had noted that the French and Russian versions of the words "detention with hard labour" in paragraph 43 (a) of the report did not tally. He wished to know whether the provision corresponded to the United Nations Standard Minimum Rules for the Treatment of Prisoners and whether the Libyan Arab Jamahiriya had ratified those Rules.

99. Mr. DIPANDA MOUELLE congratulated the Libyan delegation on its reports, but endorsed the comments made by Mr. Gil Lavedra and Mr. Khitrin. He had found it difficult to see whether Libyan legislation incorporated the articles of the Convention and what steps had been taken to implement that instrument.

100. He hoped that, in future, the Libyan Arab Jamahiriya could submit reports in keeping with the Committee's guidelines.

101. Mr. SORENSEN (Country Rapporteur) suggested that it would be preferable for the Libyan delegation not to give oral replies and for the Government of the Libyan Arab Jamahiriya to be requested to submit an additional written report following the Committee's guidelines, with answers to the questions put by the members of the Committee, and to attach the texts of the relevant legislation, which could be translated into the Committee's working languages.

102. The CHAIRMAN said that that suggestion would be in accordance with rule 67, paragraph 2, of the Committee's rules of procedure.

103. The additional report would enable the Committee to assess the extent to which the Libyan Arab Jamahiriya was implementing the Convention. To be consistent with the Committee's guidelines, it should contain a general section on policy, referring to the Convention article by article and indicating how it was applied in legislation and in practice. It should also state whether there had been any cases of torture, in what circumstances and how often, and what the response of the authorities had been. It would also be useful, as several members had suggested, for the additional report to contain the main legislative provisions referred to in the oral introduction so that they could be translated into the Committee's working languages. In preparing the additional report, assistance could be requested from the Committee and from the United Nations Centre for Human Rights.

104. If the additional report could be submitted by February 1992, the Committee could discuss it at its session in April 1992.

105. Mr. HAFYANA (Libyan Arab Jamahiriya) said that the Committee's difficulties seemed to arise from the fact that the Libyan report had been submitted in Arabic, which was, however, an official language of the United Nations and was spoken by 100 million people throughout the world.

106. The Committee's second difficulty was the lack of understanding of the political and judicial system of the Libyan Arab Jamahiriya.

107. There had also not been enough time for the Committee to study all the Libyan legislative texts. He confirmed that it was the intention of the Libyan Arab Jamahiriya to ensure that the Convention became part of Libyan legislation.

108. His oral introduction had been prepared in the light of the reports submitted by other States parties to the Committee at previous sessions and the questions put by members of the Committee. He had in fact compared Libyan legislation and judicial guarantees with the provisions of the Convention. However, he realized that the Committee had genuine difficulties and his Government would comply with its request.

109. The CHAIRMAN stressed that it was quite normal for the Libyan Arab Jamahiriya to have submitted its text in Arabic, an official language of the United Nations. He welcomed the assurance that the Libyan Arab Jamahiriya would submit an additional report for consideration by the Committee at its next session.

The meeting rose at 1.15 p.m.